Sanjiv

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2063 OF 2006

Shri Anil Dattatray Tendulkar ... Petitioner

Vs.

State of Maharashtra ...Respondent

Ms. Gauri Godse for the Petitioner.

Mr. F. R. Shaikh, APP for the Respondent.

CORAM : SMT. RANJANA DESAI, J.

DATED : 7TH NOVEMBER, 2006.

P.C. :-

1. In this Writ Petition filed under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, the petitioner has prayed that observations made against the petitioner, in paragraph 13 of Order dated 15th July, 2006 passed by the Judicial Magistrate, First Class in Criminal Case No. 87 of 2004, be expunged.

2. I have heard Ms. Godse, the learned counsel appearing for the petitioner. Ms. Godse stated that the observations made by the learned Magistrate in paragraph 13 of his Judgment are totally uncalled for. She submitted that the said observations have damaged the reputation of the petitioner and need to be expunged. She drew my attention to the show cause notice dated 15th July, 2006 issued by the learned Magistrate calling upon the petitioner to explain as to why action should not be taken against him under Section 191 of the Indian Penal Code. She submitted that even in this notice the learned Judge has concluded that the petitioner has given false evidence. The learned counsel contended that it was not open to the learned Magistrate to make such disparaging observations without hearing the petitioner. In support of her case, the learned counsel relied upon the judgments of the Supreme Court in ***State of West Bengal and Ors. Vs. Babu Chakraborthy, (2004) 12 Supreme Court Cases 201,*** *in* ***Manish Dixit & Ors. Vs. State of Rajasthan (2001) 1 SCC 596*** and in ***Arun R. Gupte Vs. State of Maharashtra, 1995(1) Mh. L. J. 761.***

3. The second paragraph of the show cause notice dated 15/07/2006 issued by learned Magistrate reads thus:-

> ***"It was observed in my judgment that evidence given by you is false. You being legally bound by an oath to state the truth but you deposed and gave false evidence. Hence I hereby notice you that why action should not be taken against you under Section 191 of Indian Penal Code to explain the circumstances you appear before me on 25.07.2006."***

4. A bare reading of this notice makes it clear that the petitioner has been asked to explain the circumstances. It will therefore, be open to the petitioner to satisfy the learned Magistrate that he has not given any false evidence and he is not guilty of the offence under Section 199 of the Indian Penal Code.

5. Therefore, in my opinion, the petition seeking expunging of remarks made in paragraph 13 of the Judgment delivered by the learned Magistrate, at this stage, is pre-mature. Admitting such a petition, at this stage, would mean indirectly interfering with the show cause notice issued by the learned Magistrate. I am unable to do so.

6. Hence, in my opinion, the petition cannot be entertained at this stage and is dismissed as such. However, the petitioner may approach this court at the appropriate stage for the same relief and

at that stage his prayers

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will be dealt with in accordance with law. All the contentions of the petitioner are kept open. It is made clear that this Court has not expressed any opinion on the show cause notice. Needless to say, that the learned Magistrate will consider all aspects with open mind.

(SMT. RANJANA DESAI, J.)